

LITIGATION ROSTER

SPECIAL TAXES

NOVEMBER 2008

**Special Taxes  
November 2008**

**NEW CASES**

Case Name

Court/Case Number

CALIFORNIA DISTRIBUTORS ASSN, et al.  
SHAITRIT, ASHER

Sacramento Superior Court 34-2008-80000082  
San Diego Superior Court 37-2008-00094283

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**CLOSED CASES**

Case Name

Court/Case Number

NONE

Please refer to the case roster for more detail regarding new and closed cases

**Special Taxes**  
**LITIGATION ROSTER**  
November 2008

**ANVARI, ALI v. State Board of Equalization of California**

San Francisco Superior Court Case No. CPF-08-508935

Filed – 05/02/08

*BOE's Counsel*

Karen Yiu

*BOE Attorney*

Dana Flanagan-McBeth

*Plaintiff's Counsel*

Barzin Barry Sabahat

Anchor Law Group, APC

Issue(s): Was the Notice of Determination of Underground Storage Tank Maintenance Fees properly issued and were the subsequent levy actions taken by the Board appropriate. (Health and Safety Code sections [25299.41](#), [25284](#); Revenue and Taxation Code sections [50109](#), [50136](#), and [50113.1](#)).

Audit/Tax Period: 1/1/97 – 12/6/97

Amount: \$40,196.22

Status: On November 3, 2008, the action was transferred to San Francisco Superior Court. Hearing on BOE's Demurrer to plaintiff's amended Petition for Writ of Mandate and Complaint is scheduled for December 19, 2008.

**CALIFORNIA DISTRIBUTORS ASSOCIATION, et al. v. State Board of Equalization**

Sacramento Superior Court Case No. 34-2008-80000082

Filed – 11/12/08

*BOE's Counsel*

Bob Asperger

*BOE Attorney*

Sharon Brady Silva

*Plaintiff's Counsel*

Amy L. Silverstein

Silverstein & Pomerantz LLP

Issue(s): Was the tax rate on tobacco products set properly for the 2008/09 fiscal year in determining the wholesale cost of tobacco ([Revenue and Tax Code sections 30123, 30126, 30131.2, 30131.5](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: Hearing on plaintiff's Motion for Peremptory Writ of Mandate is set for January 23, 2009.

**CA FARM BUREAU FEDERATION I, et al. v. CA State Water Resources Control Board, et al.**

California Supreme Court Case No. S150518

Filed – 04/13/04

Sacramento Superior Court Case No. 04CS00473

*BOE's Counsel*

Court of Appeal, Third Appellate District Case No. C050289

Molly Mosley

*Plaintiffs' Counsel*

*BOE Attorney*

David A. Battaglia, Alan N. Bick

Renee Carter

Gibson, Dunn & Crutcher LLP

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending scheduling of oral argument. On August 1, 2008, plaintiffs filed a supplemental brief to address issues discussed in a recent California Supreme Court decision involving legal standards applicable to proposition 218. BOE will file a supplemental brief.

**CA FARM BUREAU FEDERATION II, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS00538

Filed – 01/13/05

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION III, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS00651

Filed – 04/26/06

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION IV, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

*Plaintiff's Counsel*

Elizabeth Mann, Jeffrey N. Goldberg  
McDermot, Will & Emery LLP

*BOE's Counsel*

Steven J. Green  
*BOE Attorney*  
Jeffrey Graybill

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on plaintiffs’ Motion for Summary Adjudication of Issues and on BOE’s Motion for Summary Judgment is scheduled for January 27, 2009.

**EMPLOYERS DEPOT, INC. v. The State Board of Equalization**

Sacramento Superior Court Case No. 03AS05773

Filed – 10/16/03

*Plaintiff's Counsel*

Peter J. Celeste  
Professional Law Corporation

*BOE's Counsel*

Amy J. Winn  
*BOE Attorney*  
Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 1997-2001

Amount: Unspecified

Status: The case has been settled. Pending dismissal.

**EQUILON ENTERPRISES LLC, et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 05AS02406

Filed – 06/01/05

*Plaintiffs' Counsel*Thomas H. Steele, Pilar M. Sansone  
Morrison & Forrester LLP*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Carolee Johnstone

Issue(s): Validity of the Childhood Lead Poisoning Prevention fee ([Health and Safety Code sections 105275-105310](#)) as it applies to Equilon Enterprises LLC, et al.

Audit/Tax Period: 2002Amount: \$3,910,359.10

Status: Trial court judgment was entered on April 8, 2008 in favor of defendants. Equilon's Notice of Appeal was filed June 4, 2008. Preparation of the record on appeal is continuing.

**GREYHOUND LINES, INC. v. California Board of Equalization**

Sacramento Superior Court Case No. 07CS00054

Filed – 01/12/07

*Plaintiff's Counsel*William D. Taylor, Eli R. Makus  
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP*BOE's Counsel*

Jeff Rich

*BOE Attorney*

Renee Carter

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05Amount: \$295,583.04

Status: Trial preparation. Discovery continues.

**MORNING STAR COMPANY v. The State Board of Equalization, et al.**

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS

Filed – 03/06/08

*Plaintiff's Counsel*Brian C. Leighton, Richard Todd Luoma  
Attorneys at Law*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05Amount: \$38,698.92

Status: BOE's answer was filed May 12, 2008.

**NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.**

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

*Plaintiffs' Counsel*

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending the scheduling of oral arguments. On August 1, 2008, plaintiffs filed a supplemental brief to address issues discussed in recent California Supreme Court decision involving legal standards applicable to Proposition 218. BOE will file a supplemental brief.

**NORTHERN CA WATER ASSOCIATION, II, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

*Plaintiffs' Counsel*

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, III, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

*Plaintiffs' Counsel*

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, IV, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, V, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly  
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.**

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders  
Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified



Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PARMAR, ASHOK V., et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BC379013

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian  
Dakessian & Associates, PLC

Filed – 10/11/2007

BOE's Counsel

Ron Ito  
BOE Attorney  
Dana Flanagan-McBeth

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: On November 26, 2008, the court issued its tentative ruling in favor of plaintiffs. Plaintiffs were ordered to prepare the judgment and submit to the court on or before December 12, 2008.

**SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California**

San Francisco Superior Court Case No. CPF-06-506789

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey  
Renne, Sloan, Holtzman, Sakai LLP

Filed – 11/15/06

BOE's Counsel

Llewellyn/Graybill  
BOE Attorney  
Llewellyn/Graybill

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: Civil proceedings are stayed pending the rule-making process. The Office of Administrative Law (OAL) approved the Board's regulatory changes on June 10, 2008, and sent them to the Secretary of State. The new regulations, adding clarification to the definition of "distilled spirits", are operative October 1, 2008. Industry has challenged the validity of the regulations, in the case known as *Diageo-Guinness USA, Inc. v. BOE*, reported above.

**SHAITRIT, ASHER v. California State Board of Equalization**

San Diego Superior Court Case No. 37-2008-00094283

Plaintiffs' Counsel

Frederick C. Phillips  
Phillips, Haskett & Ingwalson

Filed – 11/15/06

BOE's Counsel

Leslie Branman Smith  
BOE Attorney  
Gregory Day

Issue(s): The issue in this case is whether plaintiff, a licensed distributor of cigarettes, purchased and distributed unstamped cigarettes subject to the Cigarette and Tobacco Products Tax Law (Revenue and Taxation Code section [30000](#) et seq.).

Audit/Tax Period: 5/1/99 – 5/31/01

Amount: \$157,871.09

Status: BOE is determining whether to answer or demur.

**SILVERS, STEPHEN F., et al. v. State Board of Equalization, et al.**

Los Angeles Superior Court Case No. BC388468

Plaintiffs' Counsel

William K. Hanagami

The Hanagami Law Firm

Filed – 04/04/08

BOE's Counsel

Diane Shaw

BOE Attorney

Renee Carter

Issue(s): Whether BOE has a duty and obligation to assess insurance taxes against Lexington Insurance Company, a Delaware Corporation and non-admitted insurer ([Insurance Code section 1760, et seq. and 1763.1](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: BOE's Answer was filed August 8, 2008. Final Status Conference and Mandatory Settlement Conference are scheduled for April 3, 2009. Trial is set for April 13, 2009.

**SMILAND PAINT COMPANY, et al. v. California Department of Health Services, et al.**

Sacramento Superior Court Case No. 01CS01318

Plaintiffs' Counsel

William M. Smiland, William Chase Ahders

Smiland & Khachigian

Filed – 09/14/01

BOE's Counsel

William L. Carter

BOE Attorney

Mike Llewellyn

Issue(s): Whether the Childhood Lead Poisoning Prevention (CLLP) fee under the Childhood Lead Poisoning Prevention Act of 1991 ([Health and Safety Code sections 105275–105310](#)) are properly imposed on plaintiff who never manufactured or distributed lead-based products.

Audit/Tax Period: None

Amount: \$2,400,000.00

Status: Civil proceedings are stayed pending bankruptcy.

**SPRINT COMMUNICATIONS COMPANY, L.P. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-06-455982

Plaintiff's Counsel

Richard N. Wiley

Attorney at Law

Filed – 09/07/06

BOE's Counsel

Wang/Standen

BOE Attorney

Carolee Johnstone

Issue(s): Whether the BOE appropriately applied the Emergency Telephone Users Surcharge ([Revenue and Taxation Code section 41001 et seq.](#)) to certain charges Sprint bills to its California customers.

Audit/Tax Period: 12/01/97-04/30/00

Amount: \$2,289,936.82

Status: Oral argument at the trial was held November 14, 2008 – pending decision.

**U.S. SMOKELESS TOBACCO BRANDS INC. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-07-463592

*Plaintiff's Counsel*

Amy L. Silverstein, Edwin P. Antolin  
Silverstein & Pomerantz LLP

Filed – 05/22/07

*BOE's Counsel*

Julian O. Standen

*BOE Attorney*

Sharon Brady Silva

Issue(s): [Revenue & Taxation Code section 30123](#) requires distributors of tobacco products to pay an excise tax on distribution of tobacco products based on the wholesale cost of the products. Plaintiff purchased the product from an affiliated manufacturing corporation owned by the same parent company. Plaintiff contends that the taxable wholesale cost should be based on its price to purchase from the manufacturer, rather than its sales price to distributors, which it previously used to calculate the tax base.

Audit/Tax Period: 01/94-11/96

Amount: \$725,977.90

Status: Trial held September 9, 2008, September 22, 2008 and September 24, 2008. Judge to enter interim proposed decision, with oral argument to be held in February 2009.

**ULTRAMAR, INC. v. S. Kimberly Belshe, et al.**

USDC, Central Dist. CA Case No. CV 04-6468 MRP

*Plaintiff's Counsel*

Richard E. Nielsen  
Pillsbury, Winthrop, Shaw, Pittman LLP

Filed – 08/04/04

*BOE's Counsel*

Elisa Wolfe

*BOE Attorney*

Carolee Johnstone

Issue(s): Ultramar, Inc., a paint manufacturer, contends that certain regulations issued with respect to the Childhood Lead Poisoning Prevention (CLPP) fee ([Health and Safety Code sections 105275 – 105310](#)) should be declared invalid and unconstitutional and that the BOE and Department of Public Health should be enjoined from enforcing the CLPP program and collecting and assessing the CLPP fee against Ultramar.

Audit/Tax Period: 1991-1999 and 2001

Amount: \$6,348,189.19

Status: The lawsuit was stayed by the District Court on July 14, 2005, after an abstention and sovereign immunity (11<sup>th</sup> amendment) motion was heard by the court.

## **DISCLAIMER**

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